REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed April 14, 2005. At the time of the Final Office Action, Claims 1-11, 13-18 and 20 were pending in this Application. Claims 1-11, 13-18 and 20 were rejected. Claims 12 and 19 were previously cancelled without prejudice or disclaimer. Claims 16, 17 and 18 have been amended to further define various features of Applicants' invention. Applicants respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. §103

Claims 1-3, 6, 8, 9, 18 and 20

Claims 1-3, 6, 8, 9, 18 and 20 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,012,870 issued to Harold W. Dillingham ("870 Dillingham") in view of U.S. Patent No. 5,977,730 issued to Ronald W. Clutter et al. ("Clutter et al.").

In order to combine references for an obviousness rejection, there must be some teaching, suggestion or incentive supporting the combination. *In re Laskowski*, 871 F.2d 115, 117, 10 U.S.P.Q.2d 1397, 1399 (Fed. Cir. 1989). The fact that a prior art device could be modified so as to produce the claimed invention is not a basis for an obviousness rejection unless the prior art suggested the desirability of such a modification. *In re Gordon*, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). In addition, it is also improper to use the claimed invention as an instruction manual or template to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re Fritch*, 972 F.2d 1260, 1266, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992).

Applicants respectfully traverse and submit that there is not adequate motivation to combine Dillingham and Clutter as suggested by Examiner. The present claimed embodiments relate to a pavement repair system (Independent Claim 1), a hopper assembly for a pavement repair vehicle (Independent Claim 13), and a method for heating a hopper in a pavement repair vehicle (Independent Claim 18). The Dillingham reference discloses a "portable apparatus ... for transporting heated pavement repair materials." See abstract.

However, the Clutter reference relates to "a method and apparatus for controlling a lifting magnet of a materials handling machine." Col. 1, lines 19-21, emphasis added. Additionally, the Clutter reference "finds particular application in conjunction with lifting magnets used on cranes and other prime movers in the steel and scrap metal industries." Col. 1, lines 21-23, emphasis added.

Applicants submit that neither Dillingham nor Clutter suggests the desirability of the Examiner's suggested combination. Further, Applicants submit that one of skill in the art in road paving machinery would not look to machinery for the steel and scrap metal industries, in general, or to a lifting magnet, in particular, for ways to modify the teachings of Dillingham. Further, Applicants note that Clutter fails to have any relevance to road paving machinery or the handling of paving materials that must be heated. Instead, Applicants submit that the suggested combination is an improper use of the claimed embodiments as template to piece together the teachings of the prior art. Such a combinations fails to support a rejection under §103(a).

Applicants request reconsideration, withdrawal of the rejections under §103(a) and full allowance of Claims -3, 6, 8, 9, 18 and 20

Claims 4, 5, 7, 10, 11 and 13-17.

Claims 4, 5 and 7 were rejected under 35 U.S.C. §103(a) as being unpatentable over 870 Dillingham and Clutter et al. as applied to Claim 1, and further in view of U.S. Patent No. 5,988,935 issued to Harold W. Dillingham ("935 Dillingham"). Claims 10 and 11 were rejected under 35 U.S.C. §103(a) as being unpatentable over 870 Dillingham and Clutter et al. as applied to Claim 1, and further in view of U.S. Patent No. 5,419,654 issued to Scott P. Kleiger ("Kleiger"). Claims 13 and 15-17 were rejected under 35 U.S.C. §103(a) as being unpatentable over 870 Dillingham and Clutter et al. in view of Kleiger. Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over 870 Dillingham, Clutter et al. and Kleiger as applied to Claim 13 above, and further in view of 935 Dillingham.

Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious. As discussed above, each of the Claims listed above depends from a claim that has

now been placed in condition for allowance, thereby obviating the present rejections. Additionally, Applicants submit that the additional reference also fail to disclose, teach or suggest a hydraulically generated on-board generator as recited in the Independent Claims.

Accordingly, Applicants respectfully request reconsideration, withdrawal of the §103 rejections and full allowance of Claims 4, 5, 7, 10, 11 and 13-17.

CONCLUSION

Applicants have now made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicants respectfully request reconsideration of remaining Claims 1-20 as amended.

Applicants believe there are no fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2548.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorney for ~~Applicants~~

Brian E. Szymczak
Reg. No. 47,120

SEND CORRESPONDENCE TO:
BAKER BOTTS L.L.P.
CUSTOMER ACCOUNT NO. **31625**
512.322.2548
512.322.8340 (fax)

Date: 6/14/05